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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,539	09/19/2003	Robert Berghash	20705.0 (Berghash et al.)	5912
1342	7590	09/30/2005	EXAMINER	
PHILLIPS LYTTLE LLP INTELLECTUAL PROPERTY GROUP 3400 HSBC CENTER BUFFALO, NY 14203-3509			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,539	Applicant(s) BERGHASH ET AL.	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Affidavit(s) filed on 11 August 2005 under 37 CFR 1.131 is sufficient to overcome the Tyler reference. However, new ground(s) of rejection follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Berhash & Frost Affidavit.

Claims 1-10 are rejected based on applicants own admission provided in the Affidavit dated 11 August 2005 that the invention was conceived prior to September 2002. It appears that the reduction to practice occurred in July 2002. Therefore the submitted Affidavit adequately discloses the conception, promotion or use of the game prior to September 2002, which is more than one year of the filing date of this application. Therefore, it is admitted prior art.

Additionally:

4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (2,497,749).

Regarding claim 1, Wagner discloses a flexible hand shield (hand and finger shield 10) having a convex outer surface and a concave inner surface, an opening (elongated finger or cavity 15) and an interior grip (elongated element 12) portion connected to the shield portion and extending away from the shield portion and configured to slidably embrace an object (see figures

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1 and 2). The preamble, a hand shield adapted for use with a hockey stick, does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Regarding claim 2, Wagner shows the interior grip portion (12) extends away from the perimeter of the opening.

Claim 3, Wagner shows a plurality of flexible tabs. The broadest reasonable interpretation of *generally parallel flexible tabs* would include the elongated lower portion 12 which is turned over on itself and sewed together.

Regarding claim 4, as best seen in figures 1-3, Wagner shows the opening (15) is rectangular.

Regarding claim 5, Wagner shows, because the opening it is formed of a flexible material it can accommodate multiple cross-sectional configurations of an object.

Regarding claim 6, as best seen in figures 1-3, Wagner shows the opening (15) is rectangular.

Regarding claim 7, Wagner provides a flexible cavity or opening (15), which is adapted to receive a plurality of different objects. The cavity of Wagner is capable of receiving a hockey stick.

Regarding claim 8, Wagner shows the opening (15) is formed of a flexible material (see column 1, lines 52-55).

Additionally:

5. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Powell (3,037,320).

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Regarding claim 1, Powell discloses a flexible shield (cup-shaped hand guard 16) having a convex outer surface and a concave inner surface, an opening (the cavity formed between the two mounting sections 22) and an interior grip (hand grip mounting section 18) portion connected to the shield portion and extending away from the shield portion and configured to slidably embrace an object (see figures 1 and 6). The preamble, a hand shield adapted for use with a hockey stick, does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Regarding claims 9 and 10, Powell shows a toy lance having a shaft (14) and a blunt edge such as ball (44) to avoid injury. It is noted that the blunt edge (44) is equivalent to the claimed blade. The claim does not require the hockey stick to be of a particular structure. Therefore, any stick having a shaft and a blade can be considered a hockey stick and can be used to play a game of hockey. The toy lance of Powell can be used to play a game of hockey.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

26 September 2005



MITRA ARYANPOUR
PRIMARY EXAMINER